

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

URELLA.SPAIN	:	
a/k/a URELLA.SPAIN-BEY	:	
	:	
Plaintiff,	:	
	:	CIVIL ACTION
	:	
v.	:	NO. 97-4010
	:	
	:	
COLONIAL PENN INSURANCE	:	
COMPANY	:	
	:	
Defendant.	:	

MEMORANDUM ORDER

Presently before the court is defendant Colonial Penn's unopposed Motion to Dismiss Part of Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(6). Defendant moves for the dismissal of those portions of the complaint claiming gender discrimination pursuant to Title VII of the Civil Rights Act, 42 U.S.C. 2000(e), and the Pennsylvania Human Relations Act, 43 P.S. §§ 951-963. Defendant also seeks to have dismissed the portion of the complaint claiming punitive damages under the Family Medical and Leave Act of 1993 ("FMLA"), 29 U.S.C. §§ 2601-2654. For the following reasons, defendant's motion shall be granted.

I The Gender Discrimination Claim

Defendant moves for the dismissal of those portions of the complaint alleging gender discrimination pursuant to Title VII and the Pennsylvania Human Relations Act. In deciding such a motion, the Court determines "whether, under any reasonable

reading of the pleadings, the plaintiff may be entitled to relief, and the Court must accept as true the factual allegations in the complaint and all reasonable inferences that can be drawn therefrom.” Namiv. Fauver, 82 F.3d 63, 65 (3d Cir. 1996).

In count I of the instant complaint, plaintiff alleges that she was denied promotions and other employment opportunities by defendant employer “solely on the basis of her race and sex.” (Compl. at 7-8, ¶¶ 47, 50 & 52.) Count IV of the complaint broadly alleges “unlawful employment practices” in violation of the Pennsylvania Human Relations Act. (Compl. at 11, ¶ 64.)

Before a civil action for discrimination may be filed under either Title VII or the Pennsylvania Human Relations Act, the complainant must have already exhausted the prerequisite administrative remedies of filing charges with either the Equal Employment Opportunity Commission (“EEOC”) or the Pennsylvania Human Relations Commission (“PHRC”). Woodson v. Scott Paper Co., 109 F.3d 913, 925 (3d Cir. 1997); Robinson v. Dalton, 107 F.3d 1018, 1020 (3d Cir. 1997); Parson v. City of Philadelphia Coordinating Office of Drug and Alcohol Abuse Programs, 833 F.Supp. 1108, 1112 (E.D. Pa. 1993).

Moreover, where the discrimination claims brought in a civil action do not completely duplicate those brought in the preceding administrative claim, those that are new to the civil action will be dismissed for failure to comply with the prerequisite administrative filing. See Antol v. Perry, 82 F.3d 1291, 1295-96 (3d Cir. 1996) (affirming grant of summary judgment against plaintiff’s gender discrimination claim for failure to exhaust administrative remedies where plaintiff’s EEOC complaint alleged only disability discrimination); Walkerv. Erat, 1988 U.S. Dist. LEXIS 8759, *4-*5

(E.D.Pa.1988)(grantingdefendant’smotiontodismissplaintiff’sgenderdiscrimination claimforfailuretoexhaustadministrativeremedieswhereplaintiff’sEEOCcomplaint allegedonlyracediscriminationandnotgenderdiscrimination).

In Antol, the court refused to allow plaintiff to add a gender discrimination claim to his civil suit when he had failed to allege gender discrimination in the underlying administrative proceedings. Antol, 82 F.3d at 1296. Similarly, in the present case, plaintiff’s administrative claims alleged race, age, and disability discrimination, but failed to allege gender discrimination. (Def.’s Mot. To Dismiss Part of Compl., Ex. “A.”) Accordingly, plaintiff’s failure to allege gender discrimination at the underlying administrative level precludes her from alleging it in the present action.

Thus, under any reasonable reading of the pleadings, and accepting all plaintiff’s allegations as true, her claim for gender discrimination is precluded and shall be dismissed without prejudice.

II The Claim for Punitive Damages Under the FMLA

Defendant also moves for the dismissal of the portions of the complaint seeking punitive damages under the FMLA. Count II of plaintiff’s complaint alleges violation of the FMLA and demands punitive damages as part of the prayer for relief. (Compl. at 10, ¶ 58(e).) However, while section 2917(a) of the FMLA authorizes civil actions by employees, it expressly limits recovery to actual damages, liquidated damages, equitable relief, and fees and costs. 29 U.S.C. § 2617(a). This section states in relevant part:

[a]ny employer who violates section 2615 of this title shall be liable to any eligible employee affected--
(A) for damages equal to--

(I) the amount of--(I) any wages, salary, employment benefits, or other compensation denied or lost to such employee by reason of the violation; or (II) in a case in which wages, salary, employment benefits, or any other compensation have not been denied or lost to the employee, any actual monetary losses sustained by the employee as a direct result of the violation, such as the cost of providing care, up to and equal to 12 weeks of wages or salary for the employee;

(ii) the interest on the amount described in clause (i) calculated at the prevailing rate; and

(iii) an additional amount as liquidated damages equal to the sum of the amount described in clause (i) and the interest described in clause (ii), except that if an employer who has violated section 2615 of this title proves to the satisfaction of the court that the actor or omission which violated section 2615 of this title was in good faith and that the employer had reasonable grounds for believing that the actor or omission was not a violation of section 2615 of this title, such court may, in the discretion of the court, reduce the amount of the liability to the amount and interest determined under clauses (i) and (ii), respectively; and

(B) for such equitable relief as may be appropriate, including employment, reinstatement, and promotion.

....

(3) Fees and Costs. The court in such an action shall, in addition to any judgment awarded to the plaintiff, allow a reasonable attorney's fee, reasonable expert witness fee, and other costs of the action to be paid by the defendant.

29 U.S.C. § 2617(a).

Thus, defendant correctly asserts that a plaintiff may not recover punitive damages under the FMLA, and nothing plaintiff pleads, however true, will alter that. Accordingly, that portion of the complaint seeking punitive damages under the FMLA will be dismissed with prejudice.

ACCORDINGLY NOW on this 12th Day of December, 1997, in consideration of defendant's unopposed Motion to Dismiss Part of Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(b)(6), it is HEREBY ORDERED that defendant's motion is GRANTED

whereby those portions of the complaint claiming gender discrimination pursuant to Title VII and the Pennsylvania Human Relations Act, as well as those portions seeking punitive damages under the 1993 Family Medical and Leave Act are dismissed with prejudice.

BY THE COURT:

CLIFFORD SCOTT GREEN, S.J.